

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 23, 2014

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal Nos. 2013AP2020
2013AP2021**

**Cir. Ct. Nos. 1996CF961223
1996CF964865**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JAMES PARRISH HILL,

DEFENDANT-APPELLANT.

APPEALS from orders of the circuit court for Milwaukee County:
DAVID L. BOROWSKI, Judge. *Affirmed.*

Before Blanchard, P.J., Lundsten and Sherman, JJ.

¶1 PER CURIAM. James Hill appeals orders denying his postconviction motion filed under WIS. STAT. § 974.06 (2011-12).¹ We affirm.

¶2 In 1996 Hill pled guilty to various crimes, including a number of child sexual assault counts. Each of the sexual assault counts was charged in the information as either sexual intercourse or sexual contact. In his current postconviction motion, Hill alleged that the plea colloquy was deficient because the definitions of “sexual contact” and “sexual intercourse” were not sufficiently stated. The State, after discussing the case with Hill’s trial counsel, conceded before the circuit court that it could not prove that Hill understood the definition of “sexual contact,” and therefore the State agreed the child sexual assault convictions based on “sexual contact” should be vacated.

¶3 The circuit court later concluded that the plea colloquy was also deficient as to the definition of “sexual intercourse,” and that an evidentiary hearing was thus necessary at which the State would have to prove by clear and convincing evidence that Hill understood the definition of “sexual intercourse.” After that hearing, the court found that Hill understood the definition of both “sexual intercourse” and “sexual contact” but, because the State stood by its concession on the sexual contact counts, the court dismissed those counts, and otherwise denied Hill’s motion.

¶4 Because the court dismissed the “sexual contact” charges, only the issue of “sexual intercourse” remains on appeal. Hill argues that the evidence was insufficient to support the court’s finding as to his understanding of this term. We

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

conclude that the evidence was sufficient. Hill's trial counsel testified that he would normally not have allowed a defendant to plead guilty without explaining the elements. The court found that testimony credible, and it is sufficient to establish Hill's knowledge of the definition of "sexual intercourse" by clear and convincing evidence.

¶5 Hill argues that this conclusion is inconsistent with the State's concession on the sexual contact charges, because the State previously admitted that trial counsel's recollection was insufficient to prove Hill's knowledge. However, regardless whether that concession is consistent, or whether it was necessary or the circuit court was required to accept it, the court's acceptance of the concession did not require it to adopt the State's rationale for the concession for purposes of other charges.

¶6 Hill next argues that there was no meeting of the minds between himself and the State on the elements of the "sexual intercourse" charges, and that the plea was induced by inaccurate information. Both of these arguments are based on the idea that Hill did not understand the definition of "sexual intercourse" discussed above. However, we already concluded above that Hill did, in fact, understand that definition.

¶7 Hill next argues that his pleas should be withdrawn due to ineffective assistance of counsel. This argument is again premised on Hill's claim about his lack of understanding about the elements, which we have already rejected.

¶8 Hill next argues that his postconviction counsel was ineffective by not raising the above issue in his first postconviction proceeding. Because the issue that Hill claims should have been raised has now been addressed on the

merits, there is no further relief that could be granted on a claim of ineffective assistance by postconviction counsel.

¶9 Finally, Hill argues that, instead of dismissing only the sexual contact charges, the proper remedy was to vacate the entire plea agreement and return the parties to their pre-plea status. The case law Hill relies on states that vacating the plea agreement is “ordinarily” the remedy, but that under some circumstances this remedy might not be appropriate. *State v. Robinson*, 2002 WI 9, ¶48, 249 Wis. 2d 553, 638 N.W.2d 564 (abrogated on other grounds).

¶10 Here, Hill has not persuaded us that it would be appropriate to vacate on all counts. Even with the sexual contact charges dismissed, Hill continues to receive the benefit of his plea bargain, as other counts remain dismissed, and his sentence has been reduced by the elimination of the dismissed counts. In fact, the end result of his current postconviction motion is that Hill has now received a *better* deal than he originally bargained for. No injustice occurs by leaving the remainder of the agreement in place.

By the Court.—Orders affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

